

MOTION BY SUPERVISORS ZEV YAROSLAVSKY AND
MICHAEL D. ANTONOVICH

January 12, 2010

Substitute to Item #7

On January 21, 2009 the California Public Utilities Commission (“PUC”) is set to consider Southern California Edison’s (“Edison”) Advice Letter 2334-E dated March 27, 2009 (“Advice Letter”) which asks the PUC to eliminate the long-standing customer option of placing certain types of electrical distribution system equipment underground. Edison’s Advice Letter would also allow facilities that are already located underground to be unilaterally moved aboveground during planned maintenance or capacity upgrades. These relocations could cause facilities to be placed in public rights of way or on private property without sufficient regard for the negative impacts those facilities may have on existing neighborhoods.

Moreover, the Advice Letter and its implementing draft resolution would not provide for reasonable local control by the county or other local jurisdictions over aesthetic improvements or other critical time, place and manner considerations. The PUC’s action could therefore result in negative aesthetic impacts and impede the

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county's ability to create attractive pedestrian and bicycle-friendly streets. In short, Edison's Advice Letter would impinge upon the reasonable exercise of local control and violate the key principle enunciated by the PUC that Edison must work closely with local governments when planning and installing their electrical distribution network.

In addition to these substantive concerns, County Counsel and attorneys from other local jurisdictions that are concerned about this rule change have identified several legal flaws in the PUC's proposed action. These identified flaws include a failure to follow the proper procedures specified by state law and the PUC's own rules regarding how key portions of the tariffs governing utilities may be amended, as well as a failure to even attempt to comply with the California Environmental Quality Act. Given the problems with the proposed rule change and the potentially widespread damage the change could have on communities throughout southern California, several State legislators have also communicated similar concerns to the PUC and some have even expressed a willingness to consider legislation to address any problems created by the rule change, if it is adopted in its current form.

The Los Angeles County Board of Supervisors should express our firm opposition to Edison's rule change as described in the Advice Letter and prepare for further action, through litigation and / or the support of state legislation, to overturn the approval of the Advice Letter if it is adopted by the PUC in its current form.

However, in recent months, a coalition of local governments led by members of the Westside Cities Council of Governments and joined by the League of California Cities, the California Contract Cities Association, and other individual local governments have been working cooperatively with Edison—at the urging of PUC staff—to resolve these concerns. As a result of these negotiations, Edison has recently proposed new

language that would largely address the concerns enumerated above. Critically, Edison proposes (with a few exceptions) to eliminate their plan to move existing underground facilities to aboveground locations. With one minor change, language provided by Edison would also firmly reserve local governments' right to regulate the aesthetics and placement of these facilities as long as these regulations do not effectively force the facilities to be located underground. If these important concessions are adopted by the PUC, local governments' most fundamental concerns will have been addressed and it will not be worth the expenditure of County resources to further oppose the modified rule change.

WE, THEREFORE, MOVE that the Board of Supervisors send a five-signature letter to the California Public Utilities Commission conveying:

- 1) Los Angeles County's firm opposition to the rule change as originally described in Advice Letter 2334-E and further modified in PUC Resolution E-4241 dated November 20, 2009;
- 2) Through comments provided by the Acting County Counsel, the proposed rule change's failure to comply with the PUC's own regulations and the California Environmental Quality Act; and,
- 3) The withdrawal of Los Angeles County's opposition—and agreement not to pursue further legal or other challenges to this rule change—if the PUC adopts the language contained in the revised proposal, dated January 12, 2010, which is attached to this motion.

FINDINGS AND CONCLUSIONS

1. SCE's standard Equipment installations that are paid for in rates are above ground.
2. Currently, when applicants request new service, SCE's installation for the distribution system Equipment needed, such as transformers, switches, capacitors, and junction bars (Equipment), is above-ground, not underground.
3. Rules 2, 15 and 16 allow applicants the option, at extra cost, to have distribution Equipment installed underground.
4. Over the last two years less than 20% of new SCE distribution system Equipment was requested installed underground, and other California utilities have already discontinued the Applicant option of installing Equipment underground.
5. In AL 2334, SCE seeks approval to delete the Applicant underground option in order to make its Equipment more accessible for installation, maintenance and repair, and safer for employees.
6. SCE proposes that, when its existing underground Equipment is part of a planned maintenance program or capacity upgrade it would be relocated on pads above ground to the extent technically feasible.
7. "Technically feasible" means that enough space is, or can be made, available above or below ground (as the circumstance suggests) for the electrical distribution Equipment needed for SCE to serve customers, and that other factors such as the obtaining of required permits are met. The required space is defined by existing design standards within the operation and maintenance requirements that are in compliance with applicable safety codes and regulations such as the Commission's General Orders 95 and 128.
8. Whether to allow for below-ground Equipment designs or above-ground Equipment designs is within the Commission's exclusive jurisdiction.
9. When relocating existing Equipment, SCE states it would comply with local jurisdictional mandates in matters of health, public safety, welfare and convenience if those regulations do not directly or effectively require the Equipment to be located underground or otherwise conflict with the design standards contained in SCE's Distribution Design Manual and similar documents, and also would comply with any state law of "equal dignity" to the PU Code, and federal laws, e.g., the Americans with Disabilities Act (ADA).
10. Because of the present lack of clarity regarding certain issues raised when conversion of existing underground equipment to above-ground is contemplated, the Commission will only address in this Resolution: (1) new construction situations, (2) circumstances in which capacity upgrades, conversions, and relocations are required due to customer-driven renovations of existing structures or other building activities resulting in a change of use or occupancy as defined in state or local law, and (3) situations in which above-ground retrofit into the public right-of-way is agreed to by the local authority and SCE on a case-by-case basis.
11. For a new connection or a capacity upgrade such as described in Finding 10, the customer must provide a private easement for the Equipment above ground at no cost to SCE, ratepayers or taxpayers in accordance with SCE's Commission-approved tariffs (e.g., Rule 15 or Rule 16), unless the local authority authorizes placement of the Equipment in the above-ground public right-of-way. Where the existing or required new facilities would primarily serve a single Applicant or developer as defined in SCE's tariff Rules 2, 15 or 16, the Applicant or customer must provide a private easement on its property, or the installation will be as otherwise agreed to by the local authority.
12. The party responsible for the cost of new Equipment installed in the above-ground public right-of-way, or its relocation into the above-ground public right-of-way, will also be responsible for the cost of ongoing mitigation of graffiti thereon.
13. Local laws and ordinances may apply aesthetic conditions, maintenance and location requirements (e.g., setbacks, screening requirements, etc.) to Equipment on private property if

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"Reasonable cost" should mean that the total cost of above-ground Equipment, including easement acquisition and aesthetic surface improvement and maintenance costs, is not to exceed the total cost of accommodating the new or larger Equipment underground.

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those conditions and requirements do not directly or effectively prevent Equipment from being located above-ground or otherwise conflict with design standards contained in SCE's Distribution Design Manual or similar documents.

14. It is not useful or practical to conclusively define all Equipment because the future needs of the distribution system require flexibility.
15. This AL was initially suspended for 150 days after filing and a transition period of at least 90 days will follow approval.
16. Developers and others have had over 6 months' notice of the possible need to accommodate new above-ground requirements.
17. Individual undergrounding conversion projects under Rule 20-C have a clear effective start date to establish whether they were signed before or after the date barring underground Equipment.
18. Larger ratepayer-funded or supported undergrounding conversion projects under Rule 20-A or 20-B may have more complex schedules making it unclear when the changes adopted in this Resolution apply to them.
19. SCE should define the triggering event within the schedule of undergrounding conversion projects after which Equipment may no longer be installed underground.
20. Nothing in this Resolution is intended to alter the balance of jurisdiction as between the Commission and other governing authorities, or the terms of any franchise agreement, with respect to the matters dealt with herein.
21. Local governments have a unique obligation as stewards of the public right-of-way, both above- and below-ground, and unique responsibilities and prerogatives in matters of land use planning. SCE states that it will continue to respect those roles as it cooperates with local governments, as it does with customers, in providing electric service to public projects.

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<#>Local laws and ordinances may apply similar conditions to Equipment on private property.¶
<#>When the reasonable cost test cannot be met, Equipment relocated by SCE from underground to above ground pad-mount should be installed in the public ROW per franchise agreements.¶

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THEREFORE IT IS ORDERED THAT:

1. This Resolution is effective solely as to SCE and solely as to the circumstances identified in Finding and Conclusion 10 of this Resolution.
2. SCE shall file a supplemental Advice Letter AL 2334-E-A within 45 days to modify Rules 2, 15, and 16, where applicable, to comply with Ordering Paragraphs 3 through 8.
3. SCE shall amend Rules 2, 15, and 16, where applicable to state:
In plans for service submitted to SCE on or after [a date 90 days after the effective date of this Resolution], it shall be the responsibility of the Applicant to provide for the above-ground installation of Equipment that will serve the Applicant. The installation of new Equipment shall comply with local laws and ordinances to the extent the same do not directly or effectively require the Equipment to be located underground or otherwise conflict with design standards contained in SCE's Distribution Design Manual or similar documents.
4. The Applicant's design and installation of such above-ground Equipment shall comply with the typical installations depicted in SCE's Above-Ground Equipment Aesthetics Improvement Manual and SCE's Distribution Design Manual, as well as other local agency land use law to the extent the same would not directly or effectively require the Equipment to be located underground.
5. When modifying existing Equipment installed in the above-ground public right-of-way, SCE shall comply with local ordinances respecting matters of public health and safety, welfare and convenience to the extent the same are of general applicability to other structures or equipment, regardless of ownership, installed in the public right-of-way, do not directly or effectively require the Equipment to be located underground or otherwise conflict with the design standards contained in SCE's Distribution Design Manual and similar documents.
6. SCE shall include in Rules 2, 15 and 16, where applicable:
The party responsible for the cost of new Equipment installed in the above-ground public right-of-way, or the relocation of Equipment into the above-ground public right-of-way, will also be responsible for the cost of abating graffiti on such equipment. SCE will respond

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within 48 hours to requests for such maintenance of such surface improvements in the public ROW.

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7. SCE shall define in its tariffs and forms the triggering event within ongoing undergrounding project schedules that starts the transition period of 90 days, after which Equipment may no longer be installed underground.

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8. Using consistent terminology, SCE shall also define when inactive projects will be terminated.

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9. SCE shall incorporate OP 7 and 8 after consultation with the BIA.

This resolution is effective today.

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